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WHY ARE OUR SOCIAL LAWS NOT ENFORCED?[1]

CECIL C. CARROTHERS

ON more than one occasion during the past two decades there has been demonstrated to the people of this continent the truth of Rousseau's conception of state sovereignty. The foundation of that sovereignty in so far as the making of enforceable law is concerned, is, and probably will continue to be what he terms a *volonte generale*. The power of the State to legislate effectively is limited by its power to evoke the support of that general will. And the diminution of respect for, and obedience to all law which results from ignoring that fundamental fact in legislation has been most forcibly brought to our attention in recent times.

Hence, when we take stock of our social problems and find ourselves turning to a consideration of the advisability of new laws it will not be unprofitable to remain mindful of the fact that the enforcement of such new legislation must rest in the final analysis on our general will. If such laws have not the sanction of the mass mind of the State, there is nothing more certain than that they will be unenforceable. There must be more than a disinterested concurrence in the need for such legislation. There must be the conviction of the common mind that the change is a necessity and the determination of the common will that it shall be enforced.

The solution for this primary difficulty in advancing the state socially may be found in education of that common mind and stimulation of that common will. When one remembers the considerable amount of social legislation of all kinds that has been written into our statute books during these past few years, and remembers as well how much of it has been nullified through non-enforcement one wonders whether all that might be done has been done to educate the public to an acceptance of new state responsibilities.

But it is said, even when the public is alive to the necessity for such legislation, and appears to desire its enforcement after enactment, all too often the law remains

1. *This article is the text of a speech delivered by Mr. Carrothers at the Canadian Conference on Social Work.*

unheard of and unsung. This unfortunately is only too true.

There are many enactments which although they have the active support of at least the majority of citizens nevertheless remain unenforced for a variety of causes. It is my purpose not to make an exhaustive survey of the causes of non-enforcement of such legislation but to draw attention to a few of the principal ones, with the end in view that when we come to a consideration of the suggestions for new legislation we may have in mind the problems of enforcement and the remedies therefor.

If the subject were not such a tragic one it would be amusing to note the tone of surprise adopted by Canadian newspaper editors when writing of the disclosures regarding wages made at the Stevens Commission hearing in Ottawa. If they do not know that minimum wage laws, factory acts, and similar legislation are not enforced in Canada, I am as surprised as they have intimated they are. It is, of course, a matter of common knowledge.

One could name thousands of cases in any industrial city in Canada. What are the reasons for this condition?

Some at least of the present difficulty in this connection is merely temporary, and is directly traceable to the matter of labour supply and demand. The labour requirements for both industry and office have been progressively diminishing. If we could be convinced that a swing to apparent prosperity would rectify that situation and create a demand for workers which would balance the supply, a solution would be indicated. Doubtless many will recall the disgraceful conditions prevailing in lumber camps in British Columbia during the early years of the war and the difficulty the provincial government was having in enforcing the Lumber Camps Act due to prevalent unemployment among lumber workers. This situation cleared up in 1917 and 1918 through a dearth of available labour and the attendant embarrassment experienced by the industry. Those lumbermen available for work were attracted to camps which operated in conformity with the Act, the net result being a decided improvement in all lumber camps.

But while a return to a period of industrial activity may well provide an apparent solution, it is very doubtful whether, except during wartime, we shall ever reach a period of labour shortage. At best it is a solution which is only temporary in an economic system which is destined to have recurring periods of depression, with its consequent unbalance between the supply and demand of labour.

It would seem logical to put at

the head of the list of more permanent causes of non-enforcement, the worker's lack of knowledge of his rights. There exists no agency through which he may obtain information about them. It would seem not unreasonable to require that to the 85% of our secondary school population, who comprise the future working masses, some instruction might be given in our schools by which they would learn something of the industrial and commercial organization of the society into which they are about to step, and be informed of the social legislation which exists for their protection.

Another important cause of non-enforcement of such legislation is the economic fear of the worker. For example the factory girl who does know that she is protected by the Minimum Wage Act is afraid to take advantage of that protection. It is, she argues, logically much better to be working sixteen hours a day for $1.25 than to be unemployed, which will certainly be her fate if she complains. So that even when the worker is aware of his rights those rights are nullified by non-enforcement.

Thus very naturally another cause of non-enforcement becomes evident—the lack of enforcement officials. Considering the amount of legislation of this type, Factory Acts, Building Trades Protection, Apprentice Acts, Minimum Wage Laws, the inspection branch of the government is pitifully inadequate. While much might be done to educate the worker to a better appreciation of his rights and to protect him from the results which might follow his demand for those rights, enforcement finally must be a matter for a government department and its inspectors sufficient in number, properly trained and enthusiastic for the work. This means of course more public funds devoted to inspection and to the adequate training of personnel.

Another reason for non-enforcement or for mal-enforcement is the employment of local agencies for inspection work. It must be obvious that inspectors, appointed municipally, having duties under provincial legislation of the type under consideration may be subject to pressure not easily withstood. Frequently the relationship between municipal fathers and commercial and industrial leaders is far too close for civic employees to be in any sense impartial in law enforcement which conflicts with the monetary interests represented in the municipal council.

The employment of all inspectors and supervisors under an independent provincial board would in some measure rectify this difficulty. But is it not too much to expect that even provincial govern-

ments will not be dissuaded (as elections draw near) from any rigid enforcement of legislation which cannot but be expensive and annoying to those who constitute the source of campaign funds.

In addition to purely political difficulties of this type the lack of uniform legislation in the various provinces provides local governments with justification for non-enforcement. The rigid enforcement of a minimum wage law or a factory act may mean the removal of an industry to an adjoining province. Even the most ardent advocate of strict enforcement will hesitate to drive employers of labour to another territory.

The remedy is obviously uniform legislation. One is inclined to think, however, that this end will be reached more speedily by federal legislation. There are many arguments against the Federal government entering this field of legislation. But if not all at least most of the difficulties of enforcement would be overcome if we could have legislation covering the Dominion and enforced by a politically independent board employing trained inspectors and supervisors. I am aware of the fact that this suggested remedy will necessitate amendment of the B. N. A. Act. I believe, however, that the time for such amendments is ripe and that they will not be long delayed.

In the course of indicating thus briefly the fundamental causes of the non-enforcement of social legislation I have made no mention of one problem which may well be considered basic. Social legislation must cost money. On superficial consideration, at any rate, it is a burden on industry and commerce. And because our industrial and commercial life is founded on a competitive system—a system that has tended in recent times to become a more and more vicious cut-throat competition—it may well be that enforcement of social legislation no matter how desirable, no matter how profitable in the final analysis, will not be tolerated by it. If such be the case we must either accept this non-enforcement as inevitable or devise a new industrial and commercial economy, in which the social needs of the members of the State will be the primary concern of industry, commerce, and government, and the compulsory enforcement of social legislation will be an anachronism.

COMPULSORY ARBITRATION

EDWARD G. SPENCE

INTRODUCTION

THE subject of Compulsory Arbitration will be dealt with here under three headings. In section one, its more general aspects will be discussed. In section two, the more detailed plans of New Zealand and Australia will be described. Section three will bring out a brief conclusion on the subject.

SECTION ONE

Definition

Industrial Arbitration is the process of referring disputes between employers and employees to the decision of "impartial" adjudicators. It differs from ordinary collective bargaining, (sometimes called conciliation) by its use of outsiders not parties to the dispute. It differs from mediation, (also frequently called conciliation) in that these outsiders are called upon to make the actual decisions instead of merely using their good offices to bring the contestants to an agreement.

Arbitration is of two main types and owes its growth to two lines of development. In the one case, voluntary arbitration, the parties directly concerned decide to appeal to an arbitrator's judgment as a supplement to their ordinary bargaining practises. In the other case, compulsory arbitration, the movement typically begins outside industry, and the contestants are, if necessary, forced to arbitration by the power of the state. It is with the latter we shall deal here. It arises by pressure outside an industry, when voluntary methods fail or when there is other reason for public dissatisfaction. The demand for industrial peace has been the chief driving force in the movement and it is an expedient not likely to be urged seriously until unionism is strong enough to threaten interruptions of the production of necessary services.

History

Compulsory arbitration was first adopted in New Zealand and has been in operation there since 1894. In the same year South Australia passed a law for the same purpose,

but it did not come into popular use until after 1900. Now, four of the six states have complete arbitration systems and in the other two are wage boards that with the increasing unionization of workers, tend more and more to approach arbitration in practise. The most famous of arbitration tribunals, the Commonwealth Court of Conciliation and Arbitration, established in 1904, has become the chief agency of wage determination under a steadily broadening definition of "interstate" disputes. In these countries the conditions under which the majority of wage earners work are set by these bodies; and except for criticism on points of detail and occasional sectional attempts to secure their abolition, as for example by New Zealand workers in 1911 and New Zealand farmers in 1928, the broad principles of arbitration are quite generally accepted.

These experiments stood almost alone until Canada in 1907 passed the Industrial Disputes Act, (limited by an adverse decision in 1924) later copied by Colorado and South Africa. In these places compulsory investigation is followed. Boards are to issue "recommendations" rather than awards, and the parties are at liberty to reject them, strikes being illegal during the investigation.

During the World War many nations turned to compulsory arbitration. The emergency intensified the demand for uninterrupted production and was felt to justify and make possible the use of unprecedented compulsion. Two of the largest of these temporary tribunals were the American National War Labour Board and the British Committee on Production. In 1920 Kansas created an industrial court with extensive powers in important industries, but it was declared unconstitutional by the Supreme Court in 1924. Many European countries, for example Norway, Germany and Italy, also, to a degree, Russia, have experimented with this type of legislation since the War.

Judicial Procedure

The tribunals under these diverse laws are often courts presided over by judges drawn from the regular judiciary or with similar qualifications and privileges. They are sometimes assisted by assessors representing employers and employees respectively, and procedures are frequently simplified and rules of evidence relaxed to fit the somewhat inchoate matters of the controversy. In form, it can be seen, compulsory arbitration is a semi-judicial process. Argument frequently takes the form of reference to previous decisions and particular courts have built up com-

mon bodies of practice covering a wide range of subjects. Recognized rights and procedures have grown up around such matters as discipline and discharge, and a number of "principles" of wage settlement have been enunciated; for example, wage adjustments in accordance with fluctuations of an index of living costs or in accordance with a living wage. In the main, however, arbitration is still largely legislation and compromise.

Enforcement

Here, also, compulsory arbitration falls far short of the law's full force and character. The awards are supposed to be binding with the consequent barring of strikes and lockouts punishable in various states by fines, imprisonment or the deprivation of some of the offending union's privileges. Yet in certain jurisdictions "legal strikes" may take place under specified conditions. Prosecutions have been far less frequent than flagrant violations because of the unhealthy results of imprisonment; even fines have been remitted for the sake of future goodwill. The extent to which compulsion has actually been applied has been insignificant in comparison with the degree of settlement through voluntary processes. And the agreements reached directly between parties, sometimes under the tactful encouragement of the judge, frequently have had the force of law. It is to the encouragement of this spirit of conciliation that rigor of enforcement has often been deliberately sacrificed.

Problems

1. Wages.

The inauguration of a minimum wage appears to have been an inevitable result of compulsory arbitration. In every Australian state, the idea of the basic wage has become a part of its arbitration law. The determination of the cost of living and the ability of the industry to pay seem to have been the outstanding obstacles confronting the Australian arbitration courts.

2. Hours.

The setting of hours is easier than that of wages, but is no less arbitrary. The difficulty of determining a reduction of hours lies mainly in the ascertainment of the practicability of reducing the number of hours for similar classes of work, in accordance with the standard set up for a class. The nature of the work, therefore, has been the chief criterion for the determination of the working hours.

3. Union Preference.

A compulsory arbitration law will defeat its own purpose if it discour-

ages unionism, since it definitely recognizes collective bargaining. The justification for union preference centers in five main points: first, the encouragement to unions for the sake of maintaining professional standards of skill and honour; second, the principle of judgment by result; third, the principle of neutrality; fourth, the principle of majority rule; and fifth, the reward for the union which complies with the law in good faith in the promotion of industrial peace.

Unionism stands for the ideal of concerted action for the protection of individual and social welfare. For this reason, it has a right to demand that every worker who performs a certain duty should conform to the standard set up by the union, and that the best guarantee for a satisfactory standard can only be secured through the employment of union men. The last justification for preference, that if a man abides by the awards of the court and has kept its allegiance to the law in good faith, preference should be given unionists as a reward for their obedience and loyalty, appears to be a desirable policy for the sake of making compulsory arbitration more effective.

The objections to union preference, however, fortify themselves on the strong ground of personal liberty. By giving preference to unionists, the employers abrogate their rights in the choice of their employees. There is also the other side of the question, that unless the unions are well regulated, the control of a large majority of workers by a few union officials would be a transformation of democracy into autocracy.

4. The Selection of Judges.

This is a serious problem, for judges may alter the scale of wages to such a degree as entirely to wipe out profits, or to such an extent as to cut wages to the bone. When the welfare of the community depends on the judgments of one or two individuals the importance of their selection can scarcely be exaggerated. Impartial individuals who honestly believe their opinions to be just and fair, are not difficult to find; the problem lies in the point of view they hold with respect to certain economic and legal questions under the new circumstances and demands that every controversy presents.

5. Partisan Representation.

In New Zealand this practise is followed in compulsory arbitration tribunals. It usually results in lengthened proceedings with unnecessary delay and may involve the exposing of public interest to party quarrels through conspiracies or agreements to increase prices following wage increases.

The first argument seems true, but the latter may be debated.

A tribunal may go astray, however, for lack of expert assistance, and partisan representation helps to supply this requirement for accurate knowledge. The bringing together of both parties in a conference also has the effect of bettering each other's understanding of the opposite viewpoint and hastens conciliation.

6. The Enforcement of Awards.

New South Wales has followed the plan of imposing fines on the strikers as a first charge against their wages, but this punishment has failed to prevent strikes. Imprisonment has also been proved impractical because, although punishment can be inflicted on labour leaders, it is impossible to imprison a large number of men at once. Here lies the greatest weakness of compulsory arbitration, because it fails to fulfill the purpose which it professes to achieve.

7. The Coordination of the Inter-judicial Relations between Federal and State Courts.

This system of arbitration, to be practicable, has to have the cooperation of state and federal authorities to cover those workers following their occupations in various states, because of the transient nature of their business.

All these problems, in addition to many others, are sure to be encountered upon the introduction of compulsory arbitration. The advisability of adopting the system depends upon many factors, the chief of which are the character of the industry and the size of the working population. Where industrial development has reached a highly complex stage, and where the working population is large, compulsory arbitration is impracticable. The question of efficiency in administration weighs heavily against its adoption.

Compulsory Arbitration in Australia

1. Compulsory Arbitration in South Australia and Other States.

South Australia was the birthplace of compulsory arbitration, though its first adoption, or legal recognition, was in New Zealand in 1894. It failed largely because public opinion was not yet prepared to support the bill.

In 1912, the "Industrial Court Act" created a tribunal of three members with a judge of the Supreme Court as president, with power to intervene in all industrial disputes and make decisions for their settlement. Living wages were to be made "absolutely secure" and strikes and lockouts were

outlawed by means of fines and imprisonment. This act and two minor amendments in 1915 and 1918, were consolidated in 1920 as the "Industrial Arbitration Acts 1912 to 1916."

Industrial Boards superseded the wage boards created by previous statutes. Each specializes in one industry and is composed of an equal number of representatives from management and employed. It appoints a chairman, and is then empowered to fix wages, hours of employment and working conditions.

A Board of Industry was created to coordinate the operation and administration of the Industrial Boards and the Industrial Court. The latter, being a court of appeal, gives final decisions on disputes that have not been adjusted by an industrial board. Its form remains the same as that fixed by act of parliament in 1912.

Western Australia and Tasmania have adopted plans that are almost identical with the one mentioned above.

2. The Wage Board System of Victoria.

This originated in a series of Factories and Sweat Shops Acts enacted in 1890, 1896, 1898 and 1900, which had as their object the elimination of the sweating system. In 1905 wage boards were assisted by the provision of a court of Industrial Appeals and the powers and scope of the Act were increased and enlarged.

A wage board may be established when requested either by employers or employees. Both parties forming the wage board have equal representation. The number of members varies from four to ten and they must have been actually employed at least six months in their industry within three years previous to their appointment, which is for a term of three years. Within fourteen days after their appointment they must nominate an impartial chairman. The duties of these boards are the fixing of minimum wages, maximum hours, special wages for infirm or slow workers, the right to require evidence and the enforcement of awards through fines, depending on the number of offenses. Appeals may be challenged or changed by appeals to the Governor in Council, the Supreme Court or the Court of Industrial Appeals (consisting of a registrar appointed by the Governor in Council and a judge from and by the Supreme Court). This latter court renders final decision on any case reaching it.

The wage board has eliminated sweating, determined minimum wages and improved conditions and hours of labour. At the same time

it has not retarded the industrial development of the state.

3. Compulsory Arbitration in New South Wales.

Governmental intervention began here in the nineties with a system of conciliation that was unsuccessful.

New legislation was passed in 1908, consisting of the principal act and an amendment. The Court was to embrace all industrial matters whether disputes existed or not, and the machinery of conciliation was fused with that of compulsory arbitration. The Act met objections of both employers and employees and failed to classify industries, with the result that a multiplicity of boards sprang up with overlapping jurisdictions. In 1912 a labour government repealed the act and re-established the act of 1901 with some radical changes, including the classification of industries, a combination of machinery for conciliation and mediation as well as investigation and arbitration, and also a new method for the enforcement of awards by imposing fines on wages. This act has received minor amendments in 1916, 1918, 1919, 1920 and 1922. Strikes in government service have been made illegal and a Board of Trade established to determine the cost of living and a living wage.

From reported cases it seems that compulsory arbitration has benefited the working classes in New South Wales rather than suppressed them, but as elsewhere it has not succeeded in preventing industrial warfare.

4. Wage Board Adjustment and Compulsory Arbitration in Queensland.

The history of Queensland has repeated somewhat the experience of New South Wales and of Victoria. A Wage Board Act was passed in 1908 as an extension to the Factories and Shops Act of 1900; a result of agitation by labour. Some of the results following its passage were increased wages, diminished hours of employment, and agitation for stronger unions.

The policy of the Court of Industrial Arbitration up to 1920, was determined solely by the Judges of the Court. But since the report of the Federal Basic Wage Commission in 1920, the Court, so far as the adjustment of wages is concerned, has been guided by the findings of that commission; in reality, an administrative tribunal executing the orders of the commission. In December, 1924, an Economic Commission was formed to guide the Court in shaping its policy regarding a basic wage. Its more surprising conclusions have been the subordination of the prin-

ciple of cost of living to the principle of capacity of the industry to pay, and the rejection of the doctrine of equal pay for equal work. Consequently the employers' attitude toward the report has been very favorable, but workers are not so enthusiastic in their support.

5. Compulsory Arbitration in the Australian Commonwealth.

The Federal Constitution came into operation in 1901 with a provision giving the Commonwealth the power to enact measures for the adjustment of labour disputes. Three years later the Commonwealth Conciliation and Arbitration Act was enacted on the model of the New South Wales' law of 1892. The distinguishing feature of the Commonwealth Act is its attempt to supplement the state laws through dealing with disputes arising outside the jurisdiction of of any one state.

The "president" of the Court is appointed by the Governor General from the members of the High Court. Whenever the Court takes up a case, the state industrial courts cease their activities and leave the entire matter to the judgment of the Commonwealth body. In case the award of the state arbitration court is inconsistent with that of the Commonwealth Arbitration Court, the latter prevails, and the former is declared invalid.

The Industrial Peace Act of 1920 provides for the creation of special tribunals to deal with particular industrial disputes which the Court fails to adjust. A special tribunal consists of equal representatives of employers and employees, together with a chairman chosen by mutual agreement. In default of agreement he is to be appointed by the Governor General. The tribunal possesses all the powers which were conferred upon the Arbitration Court by the Commonwealth Conciliation and Arbitration Act of 1904-1918. It is claimed that this policy encourages disputes, because a dissatisfied union can bring its case to a special tribunal to deal with the matter anew, taking what is acceptable in the decision of the Court and insisting on a new award for the rest of its demands. The power of the Court has been greatly limited.

Here, a minimum wage is not considered the lowest rate payable to any employee, but the combination of a basic or primary wage, and the secondary wage. The basic wage is the minimum standard wage for all normal unskilled labour and is determined by the cost of living. By secondary wage is meant the compensation for skill payable to the worker for the exercise of his particular or exceptional abilities. The most progressive step pursued by the Court

is the policy of fixing wages independent of profit. No absolute standard of hours for all classes has been determined, but the principle of variation of hours according to the nature of the work has been followed.

The Court possesses full power to grant or to refuse union preference; it has chosen the latter policy in every case but one, where deliberate discrimination against union workers was being determinedly attempted.

In the Commonwealth of Australia, as well as in New Zealand and New South Wales, compulsory arbitration has improved hours, wages and conditions of work, but has failed miserably in the prevention of strikes.

SECTION THREE

Results and Conclusions

Nowhere has the system brought about complete industrial peace, although New Zealand and Australia have had the fewest strikes, in proportion to union membership, in the world. There is no evidence that it has greatly affected the general level of wages, and working conditions and trends of wages have been much alike in arbitration and non-arbitration countries.

It is possible that compulsory arbitration has somewhat stabilized wage rates, acting as a brake in times of rising and falling prices. It is possible, also, that it has had a more powerful influence in altering the distribution of income within the working class rather than between classes. Its most marked effect, in Australia, seems to have been to reduce the differences between the different grades of labor through its greater emphasis upon the living wage than upon the importance of differentials. As a consequence of this, the rates of pay for skilled and unskilled labour run remarkably close together in the older arbitration countries, with great advantages in the lessening of primary poverty, but with the danger of insufficient provision for skilled labor.

Compulsory Arbitration, it may be said in conclusion, cannot be expected to abolish poverty or industrial conflict, but it nevertheless has contributed and will continue to contribute a useful technique of industrial adjustment.

ECONOMIC ASPECTS OF DIVIDEND STABILIZATION IN CANADA[1]

FRED W. P. JONES

BRIEF consideration will be given in this article to the merits of dividend stabilization as a means of diminishing the severity of the business cycle. By dividend stabilization is meant the retention of large amounts of surplus in good years so that regular dividends can be paid in times of depression.

At the present time, one of the greatest difficulties facing industrial corporations is the enormous changes in their annual volume of business. Fluctuating dividends doubtlessly increase the severity of business depressions, inasmuch as fluctuating purchasing power is a cause of economic instability. The effect of this can be seen from the following facts. In 1930, the peak year for dividends, corporate dividends had increased $133,000,000 from the year 1926, which is generally regarded as a normal year. By 1932, however, they had decreased from the peak by over $120,000,000.[1] Thus, purchasing power was expanded at the very time when it should have been curbed, and curtailed when a stimulus was needed.

The advocates of dividend stabilization maintain that a policy of dividend stabilization would control one of the two variable elements of modern economic society-profits. This control would lessen the severity of the business cycle in two ways. First, it would check the over-expansion of purchasing power, by not increasing dividend payments as business grew more prosperous. Second, in times of depression, when family income from other sources was depleted, it would create purchasing power at a time when it was most needed.

Before approving or condemning this viewpoint, it is necessary to decide two things. First, just how important a factor are dividends in producing economic stability.

1. *This article is the second extract to appear in this magazine from Mr. Jones' thesis "The Problem of Dividend Stabilization in Canada."*

1. *Based upon a study of dividend declarations as contained in corporate records.*

Second, could the policy be adopted by industry as a whole; for this would be necessary before dividend stabilization could have any effect in eliminating the business cycle.

It would be well to judge first the importance of dividends as a stabilizing factor. Figured statistically, the policy would result in with-holding approximately $55,000,000, which could be spent in times of depression.[1] There is little doubt that if this sum were spent at the present time, business would be greatly aided, provided that the funds were directed into the proper channels. Would this money, however, be spent in ways which would stimulate business? Wages, it is true, go immediately back into circulation, because people are dependent upon them for food, shelter and clothing. With dividends it is a different story, for the vast bulk of dividend income would be re-invested or placed in banks rather than turned back into the channels of circulation. This is true because the largest amounts of common stock are held by capitalists and institutions rather than by families dependent upon them for their livelihood. Furthermore, the fact that a very large percentage of Canadian securities are held by foreign investors would mean that the money would go out of the country and Canadian business would receive little stimulus.

1. *Reached by calculating annual dividends maintained at the 1926 level.*

Consideration should be given now to the disposition of the $55,000,000 which is held back while business is prosperous. This money must be kept liquid and therefore it cannot be re-invested in the industry or placed in securities, with a long time point of view. The obvious alternatives are to place the money in government bonds, marketable securities or call loans. In many cases, however, government bonds tend not to be chosen because of their very small yield. Thus, the bulk of the money held back will be invested in marketable securities or call loans. This is verified by the increase in marketable securities and call loans held by the corporations with stable dividends. In 1926, they held $33,004,000 and in 1929 they held $76,423,000.[1] More than fifty per cent. of this amount was in call loans. Thus, an ironical situation is produced, for the funds withheld are being placed where they can actually do the most harm in producing business inflation. As long as this situation prevails, dividend stabilization tends to do little towards producing a more stable economic society.

It is necessary to form some

1. *Compiled from corporate records.*

opinion as to just what would be the net effect of with-holding over $50,000,000 in dividends. At first glance, this seems like a large item, but it is well to remember that in 1929, dividends were only 6.5 per cent. of income, and in 1932, 9.3 per cent. Thus, if every corporation in Canada were to stabilize dividends, the net effect would be very small. Furthermore, it is believed that the same amount of effort spent in stabilizing wages would have a much greater effect, because wages flow directly back into the channels of distribution.

It is readily apparent that even if dividend stabilization is to have any effect upon diminishing the severity of the business cycle a large majority of the corporations would have to pay stable dividends. Therefore, it becomes essential to decide whether Canadian business in its entirety could ever adopt the policy.

The adoption of universal dividend stabilization demands that each corporation be able to make a fairly accurate estimate of earning power over a long period of time. This is necessary so that sufficient reserves can be created. Naturally, there are certain corporations receiving special protection or supplying some necessary good or service, which would have little difficulty in making a fairly accurate estimate of future earnings. The Bell Telephone Company is an excellent example of this type of corporation. Their statistical department has made a reasonably accurate estimate of earnings as long as fifteen years in advance. It is maintained, however, that the rank and file of industrial corporations have no reliable basis upon which to predict earnings. It might be argued that if a corporation has complete records it can calculate the ratio of depression years to prosperity years and calculate what percentage earnings will decline in the periods of poor business. Thus, the statistical department of the X. Y. Z. corporation would know that since 1890 their company has had five year periods of normal business succeeded by three years of subnormal business. In the periods of subnormal business, profits have fallen off 30 per cent. in each of the first two years and 25 per cent. in the third year. Reserves can then be set aside on this basis.

The above assumption, however, is based upon the fact that each depression is of approximately the same duration and severity. In the present depression, the fallacy of this assumption is readily apparent. Not only has this depression been much longer than the past two depressions, but it has been infinitely more severe than any other depression. Re-

serves calculated on past history would be by now exhausted.

One other basis exists for setting aside reserves. This would be to treat each business cycle separately, making an estimate of how long prosperity will endure and predicting the depth and length of the succeeding depression. This would be such an enormously difficult task, however, that the isolated successes would be more than overshadowed by the failures. In the United States, the experience of the American Car and Locomotive Company is a good example of the difficulty of making such a forecast.

Without an accurate basis for predicting earnings, permanent stabilization is an impossibility. From the above facts it can be seen that only a few protected corporations have such a basis. Therefore, it is maintained that permanent dividend stabilization could not be adopted by industry as a whole. In view of this, dividend stabilization would not be a potent force leading to the elimination of the business cycle.

THROUGH THE WINDOWS OF THE WORLD

ARTHUR G. DORLAND

The Silver Jubilee

THOUGH reference to the recent Silver Jubilee of the accession of George V. might now be regarded as a work of supererogation, it was, nevertheless, one of the most significant events within living memory. The monarchical principle throughout the world is quite clearly declining, except in Great Britain and throughout the British Empire-Commonwealth where the Crown is regarded with universal respect and loyalty. But important exceptions both in the past and present should not be forgotten. The long reign of Queen Victoria witnessed some interesting vicissitudes in monarchical sentiment. At the beginning of her reign a dispassionate observer might have concluded that monarchy in Great Britain had less chance of survival than in any other country in Europe. Yet the successive Jubilees of Queen Victoria witnessed in all the Dominions except Ireland a rising crescendo of loyalty which would have justified the belief that monarchy after 1901 must be an anti-climax. Such has not been the case, however, for more firmly than ever is regard for the King and Queen fixed in the hearts of millions of their subjects throughout the world. It has been aptly said that 'Love is a word too lightly bandied about by loyalists. Queen Victoria was revered. King Edward was popular. But to-day in a sense unknown to earlier history, intimate personal affection has reached up to touch a throne'.

The genuine affection felt for the present King-Emperor is based on the remarkable blending of majesty with humanity that is so characteristic not only of the King but of the other members of the Royal family. It is exemplified in the Prince of Wales who has so deservedly earned the name of 'The King's First Ambassador'. Countless anecdotes have been narrated lately illustrating this aspect of the Royal family. But many Canadians will never forget an incident of the Prince's visit to Toronto in 1919, when in full sight of forty-

thousand people he chased after a crippled war veteran's hat which had blown away and himself replaced it on the man's head. The recent marriage of the Duke and Duchess of Kent afforded another incident, when to the delight of all on-lookers the Prince of Wales led the party of Royal confetti throwers who chased the honeymoon coach. Another story narrated to the writer who ventures to believe that it has never been in print before, may also serve to illustrate this same lovable, human quality in the King and Queen. A missionary on furlough in England and married to an American, was very anxious that his wife should see the King and Queen before the end of their holidays. As no public function was imminent, the missionary, determined to achieve his purpose, called up Buckingham Palace, explained the circumstances and asked that if the King and Queen were appearing anywhere in public, they might be informed of the time and place so that they might see their Majesties. After a short delay the King's secretary came to the 'phone and said that their Majesties were driving out to fulfill some private engagement in the city the following day, and that if the missionary and his wife would stand at the gates of the Palace at a certain time they would see the King and Queen drive by. The following day at the time designated, the missionary and his wife stood in a pouring rain at the Palace gates, hardly expecting to have their wish fulfilled. But at the appointed time, along came the royal carriage which as it passed the gates its window was lowered and the waiting couple were rewarded by a gracious bow and smile from their Majesties who evidently had been made aware of the circumstances and were anxious not to disappoint.

The most remarkable feature of the recent Jubilee celebrations was the use of the radio broadcast which projected something of the personality of the King as well of the splendour and solemnity of the celebrations to an audience far vaster than could ever be reached by the printed page. The direct appeal of the King's speech to the minds and imagination of youth with whom lies the future, was a stroke of genius, while its obvious sincerity touched by emotion made its appeal to the heart as well as to the head. "I ask you to remember, that in days to come you will be citizens of a great Empire", said the King. "When the time comes be ready and proud to give to your country the service of your work, your mind, and your heart." The Silver Jubilee celebrations will unquestionably mean a deepening

and broadening of the sense of unity between the peoples and the individuals within that great family of nations, as we would like to think of the British Empire-Commonwealth of to-day.

South Africa's Greatest Problem, the Native

Reports from South Africa indicate that both economically and politically the Union is enjoying an unprecedented era of prosperity and concord. The fusion in 1933 between the former South African party under General Jan Smuts and the Nationalist party under General Hertzog prepared the way for the present period of political amity. Economic conditions in the Union also have vastly improved. The figures for foreign trade have been rising rapidly, inland revenue is increasing and agriculture is experiencing a boom. The South African government has cleared off all its war debt, so that altogether financially and economically the Union never was in a stronger position than at the present. But while the internal prosperity and political unity of South Africa have helped to bury the racial feud between Boer and Briton so that the country is united as never before, the Union is faced with another serious racial situation in the relations between whites and blacks, which constitutes its most serious problem.

The problem of the relations between whites and blacks in South Africa is much too complicated to permit any detailed explanation. In a word it is derived from the traditional Boer attitude of hostility toward the native on the one hand, and the determination of the white labour unions on the other hand to reserve for themselves all the skilled trades, and thus to keep the native population in a position of economic inferiority. But with the growing number and intelligence of the native population, it is just a question how long they will be content to accept this position of inferiority and to remain simply hewers of wood and drawers of water for the white minority.

The labour question in South Africa is further complicated by the land problem, inasmuch as by far the greater part of the best agricultural land is in the hands of the whites, despite the fact that they are outnumbered by the blacks in the ratio of approximately six to one. This means of course that the natives, because of the scarcity of land, are being driven into the urban manufacturing areas, where they are competing with increasing success against the whites. This is especially undesirable: first, because the native is

far better adapted to agricultural pursuits than to the highly competitive life of organized industry; and second, because in the cities of South Africa there is growing up a black proletariat which will be potentially dangerous material for the communist agitator; and already the threat of class war embittered by racial hatred casts its menacing shadow across the South African scene.

In the past the only South African province to adopt a liberal attitude toward the natives was Cape Colony. Neither the Transvaal nor the Orange Free State has ever allowed the native even to vote; while in Natal though in theory natives were not excluded from the franchise, in practice the qualifications were placed so high that it is said only three natives have ever succeeded in qualifying. In Cape Colony, however, in spite of a high educational qualification there are as many as 11,000 registered native voters. The liberal view of Cape Colony toward the native presented a serious obstacle at the time of the formation of the Union in 1909. At that time, however, a compromise was reached, by which it was agreed that while representatives elected to the Union or federal government should be limited to those of European descent, no one already exercising the franchise under the laws of any colony should be disqualified from voting. The Union Government was nevertheless empowered by the constitution to make subsequent changes in the qualifications of voters, but this could be done only by a two-thirds majority of a joint session of both federal houses. By this provision it was thought that the Cape native franchise was safe for all time.

Recent events in the South African Union have, however, pointed to the possibility of even this slight concession to native equality being withdrawn. Two bills have just been brought before the Parliament of the Union on the recommendation of a Parliamentary Joint Committee on Native Representation and Acquisition of Land, which in dealing with this whole native problem would prohibit further registration of natives as voters, though not depriving of the franchise those at present enjoying this privilege in Cape Colony. But while definitely rejecting the extension of equal political rights to the natives (even though safeguarded by high educational and property qualifications) the new Bill proposes an extension of the principle of indirect representation in the Senate and through a Natives Representation Council for the whole Union. Nevertheless, the Bill

seriously threatens the legitimate aspiration of the natives ever to become eligible for ordinary citizenship; while the hope of voicing their demands directly through the ordinary constitutional channels will be made increasingly difficult, pointing to force as the most obvious remedy in the future.

Those who champion the native cause claim that there is no justification for the proposed step except economic fear and greed. The native vote in Cape Colony they claim is neither venial nor a menace to good government; and to support this contention an impressive list of men might be given, many of whom have attained cabinet rank and who all at one time or another have represented the Cape native electorate. The proposed Bill is taking a much wiser course in its intention to open fifteen million acres of land for future native occupation. While this is an act of wisdom as well as of justice, this will not of itself solve the native problem. There must be a clearer intention than is at present evident to recognize the justice of the native claim to greater political and economic equality, and to realize that a policy of repression or of exploitation can only have disastrous results in the future.

New Deals, New Wine and Old Bottles

The New Deal in the United States is not unlike new wine poured rather too suddenly and clumsily into the old bottle of an antiquated political and economic system which is evidently cracking at many points. The latest crack has been the decision of the Supreme Court holding invalid the codes of the NRA. Not only has this decision thrown into confusion the whole industrial, commercial and financial life of the United States, but it is another serious blow to President Roosevelt's prestige which is rapidly waning, and it further jeopardises the success of the great experiment upon which he embarked so hopefully and courageously at the beginning of his administration. Despite the heroic efforts of his government, unemployment still stands at about twelve millions; and the Head of the Relief Administration admits that, after two years of the New Deal, there are still 20,500,000 receiving aid, a number of whom represent jobless persons whose resources are now running out. Whereas in the hectic days of March to August, 1933, it was almost blasphemy to criticise the New Deal, disappointment and criticism are now heard everywhere; and there is a growing ten-

dency to blame the President himself. Even some of those who formerly supported him, now accuse him of administrative inefficiency and the lack of clear cut, courageous leadership. He is under attack therefore from both liberals and conservatives, and his compromises on certain sections of the NRA codes evidently have satisfied neither capital nor labour. The collapse of the NRA itself is claimed by others to be principally due to this same disastrous policy of 'yielding first to this code and then to that, of upholding the National Industrial Labour Board one day and reversing its decision the next, of marking a certain business for prosecution because of failure to live up to the codes or the law one day, and practically abandoning prosecution the next.'

The blow to the President's authority in the matter of the entrance of the United States into the World Court, the increasing independence and belligerence of Congress, and now this recent decision of the Supreme Court holding invalid the codes of the NRA, are all indications of the rising tide of opposition throughout the country.

This most recent decision of the Supreme Court is particularly interesting in the light of its former important decision in regard to the Gold Clause which upheld certain aspects of Roosevelt's financial policy. This decision was undoubtedly reached in order to avoid upsetting the Government's financial programme which would have entailed serious consequences throughout the country, and would in many quarters have been a very unpopular decision. In fact the general record of the Supreme Court shows that it is 'unwilling to allow strict legal points to force it into positions which are out of touch with the practical necessities and strong popular prejudices of the moment, and that in this respect it follows election returns. Only if no legal way of escape is open to it does the Supreme Court ordinarily place itself and the Constitution directly in the way of a determined government and the country.' In view of this interpretation of the Supreme Court's previous action, it is especially significant that in its most recent decision, it has openly declared the NRA codes to be unconstitutional. All of which is important evidence of the breakdown of popular confidence in the New Deal and the mounting tide of opposition to it.

Many predictions are already being made concerning the results of the probable failure of the New Deal. Some see the possibility of a strong movement toward the left with Socialist or even com-

munist implications, others a still stronger movement to the right with Fascism in the saddle. Whatever the result may be, this at least can be fairly confidently predicted that the United States will never go back completely to pre-Roosevelt conditions. The strong centralizing influences at work during the past two years will undoubtedly leave their mark upon the American government and people. Many matters hitherto reserved to the State or local governments, such as poor relief, housing, labour conditions, collective bargaining, banking, even education have been brought by Mr. Roosevelt's experiment more or less under Federal control. Therefore, although both Wall Street and Main Street may recover something of their lost independence of action, it is unlikely that they will recover everything. In fact many characteristics peculiar to the American system, such as emphasis on property rights and sanctity of contracts, on individual and local initiative and responsibility, on the reservation of powers to the states and the enjoyment of special rights, have all been definitely weakened, with a consequent tendency towards collectivism.

Influence of the New Deal on Canada

The influence of all this upon the course of events in Canada raises some interesting speculation. Already a Conservative government has been compelled by conditions not unlike those in the United States—but fortunately not on such a colossal scale—to make promises of a 'New Deal' for Canada to end the exploitation of the worker and to curb unemployment. Already the Conservative Press, which a few years ago raised its voice to high heaven in horror at the suggestion of laying impious hands on the ark of the covenant—i.e. the British North America Act—now quite openly advocates a complete and early overhauling of our constitution. Just as in the United States, the present trend of events in Canada will undoubtedly leave its mark on our institutions and government. If therefore American experience is any criterion, one constitutional result for Canada will be to halt the marked tendency of the Pro-

vinces since Confederation to encroach on the powers of the Federal government, and thus to restore the balance in favour of the Central government which it was the intention of 'The Fathers' to establish. While it is certain that 'The Fathers' never suspected that such intentions might have decidedly collectivist tendencies, it is equally certain that few Conservatives have suspected this as yet, or have foreseen the consequences to many 'old bottles' when this 'new wine' is introduced.

TRADE JOURNALS IN CANADA[1]

W. J. ARNOLD ROSS

How the Need Arose for Industrial Papers

IN the days when manufacturing was carried on by hand in the artisan's small shop, there was little need for industrial literature. But with the invention of machinery and the introduction of the factory system, under which the fabrication of raw materials into articles of utility increased by leaps and bounds, the old form of tuition from master to apprentice could not keep pace. Instruction booklets were printed to keep those concerned with production informed, but these soon became obsolete, and frequent periodical publication became necessary.

The first business paper on this continent was published in New York in 1795, but it was not until late in the nineteenth century that Canadian industrial papers appeared. Since then the growth of trade journals in Canada has been steady and sure and there are more than one hundred and eighty-five publications covering over seventy different businesses and professions.

1. *This article is an extract from Mr. Ross' thesis "A Study of Industrial Publishing in Canada."*

Classification of Industrial Papers.

Industrial papers are divided into two main classes, one made up of "technical publications," the other of "trade papers" that serve merchandising and distribution. The technical papers discuss methods of economic production and outlook and research of markets. Trade papers give methods of successful merchandising and distribution. They forecast special lines; tell the jobber what to buy, also what not to buy; teach store management from the best practice; instruct in special methods of effective display; and outline plans for promotion and advertising.

The Basic Functions of Industrial Journalism May be Stated Under Five Major Divisions:

1. To publish news of interest to the industry represented. The publications in many trades

presented the information brought out by the recent Royal Commission on Price Spreads and Mass Buying in understandable and usable form, showing how it affects the trades in question, what should be done and what is being done about it. That is a good example of the manner in which business papers render valuable service to their readers, service that they can receive through no other source.

2. To publish technical and operative material and to provide a clearing house for information which affects the industry.

The automotive trade journals provide a typical example of technical data that are provided for the trade. Two of the largest Canadian publications in this field publish detailed mechanical specifications of all cars after the new models are introduced. This information is invaluable to garages that repair all makes of cars, as it enables them to ascertain without loss of time what they want to know about a new car.

3. To publish editorial opinion setting forth the tendencies of the industry, forecasting to some extent what will result from existing conditions; to discuss developments of a national or international character related to the industry. Its editorial influence must afford direct or indirect leadership in matters of policy.

4. To conduct research and special surveys, to have on file for the benefit of individual requirements, material beyond the editorial uses of the publication

5. To furnish through its advertising pages reliable information concerning materials, merchandise and equipment required by the industry. Some trade publishers insist that products advertised in their papers must measure up to high standards of quality.

The Significance of Editorial Activities.

The editorial activities of a business paper constitute the basic factor in its success. Before circulation can be built up or advertising patronage secured, the paper must fill a definite need among the members of its trade. If the editorial policy makes the publication profitable to the right kind of reader, the reader will make the paper profitable to the advertisers and the advertisers will make it profitable to the publisher.

An editor must have a sound knowledge of the fundamentals of the industry. To gain this he must contact the leaders in the industry as well as the rank and file of the readers. The editors of the better Canadian papers spend about three quarters of their time

out in the field because they realize that no one man can know more than the combined knowledge of the men throughout the industry.

Circulation and Advertising

Specialized circulation is the foundation of all industrial publishing. It provides a medium for the advertiser to reach those and only those who are interested in his product; conversely, the subscribers are served with the advertisements of only those products which are related to their business. Sooner or later, the circulation of any industrial paper becomes specialized by the natural withdrawal of subscribers who do not benefit by it and the addition of those who find the paper useful. A worth-while publication must have a large percentage of the members of the trade subscribe to it and to be influential must have the names of the leading men of the industry on its subscription list. It is worth a great deal to have subscribers with great buying power because this affects the rates that can be charged for advertising.

The great economic factor in advertising in industrial publications is the elimination of waste circulation. Business papers cover a particular field of industry or class of buyers. To reach all of these consumers through general publications would necessitate advertising in many different magazines and newspapers which would make the cost prohibitive. An advertiser selling an industrial good could not be sure what proportion of the buyers of his product he was reaching through general publications, as individual tastes in reading matter vary as much as in other things. By advertising in a specialized publication, however, an advertiser can be sure of reaching practically all of his prospective customers as all of them are interested in their business.

Some of the industrial publications cover close to one hundred percent of the buying power in their field. In some businesses the purchasing power is in the hands of relatively few persons; therefore, the papers which serve these industries are necessarily of comparatively small circulation, but are ideal mediums for effective advertising.

Another characteristic of trade paper advertisements is a genuine reader interest in them. Industrial publications are continually featuring new and more efficient ways of performing certain operations in an industry. Often new machinery and equipment are needed to carry out these new methods and the reader is naturally interested in the advertisements that tell him where he can buy this equipment. By natural develop-

ment, industrial papers have made themselves the nearest approach to maximum efficiency that can be found in the advertising field.

Setting Advertising Rates

In industrial publications the rate is usually quoted by the page. There are many factors which influence the rate to be charged. First of all, the cost of producing the publication must be considered. But in addition, the rate must include service in market surveys and other research work, the preparation of copy, arrangement of layout and all other services rendered to the advertiser.

The advertising rate of an industrial paper is normally determined by the following considerations:

1. Cost of production and service.

2. Buying power of circulation.

3. Efficiency of circulation work involving percentage of possible circulation.

4. Prestige of the paper and its standard as an authority in the industry.

Buying power really includes the third and fourth factors, for to reach buying power the paper must have prestige and it must cover a large percentage of the buyers of the commodity to be advertised. These conditions explain why papers of corresponding volume of circulation must vary widely in advertising rates. For example, the cost of a one page insertion in the "Canadian Textile Journal" which has a circulation of 1,350 is $65.00, while the cost of one page in "Western Hardware", which has a circulation of 1,500 is only $45.00. The reason for this wide divergence in rates is evident when one considers the amount of materials and equipment a textile mill purchases during a year as compared to an ordinary hardware merchant.

Information Leading Publishers Provide Advertisers

A business paper experiences severe competition for the advertising dollar not only from other papers in the same field, but also from other advertising media, such as newspapers and direct mail. Although the page rates of business papers are low as compared to general consumer media, their unit reader cost is much higher. Consequently they must prove their worth to an advertiser before they can get his contract. A few of the leading publishers do quite a complete job of selling their space. They make surveys of their market to show the type and position

of their subscribers, which enables an advertiser to judge whether the readers of the publication are prospective buyers of his product. Circulation data broken down by provinces and cities, are valuable as they facilitate tuning advertising coverage to sales quotas. One of the best methods of demonstrating the effectiveness of a publication is by showing the results present advertisers are receiving from their advertisements in the paper. If a manufacturer is shown that one of his competitors actually received several orders as a direct result of advertising in a publication, he soon realizes the advertising effectiveness of that business paper.

Service Extended to Subscribers

Most industrial publications supply reliable information to subscribers upon request. Many papers collect statistics, lists and other data beyond the immediate requirements of good editorial practice. "Canadian Grocer" gives market information by provinces in every issue, including the prices of many products sold by grocers. Trade publications aid manufacturers in making contacts with distributors, both domestic and foreign.

Some publications carry on a considerable amount of research work which they pass on to their subscribers. "Canadian Advertising" compiles complete market information about the principal cities in Canada each year. This research includes information about population, number of houses and type of construction, religion of the citizens, racial origin, amount of manufacturing, number of telephones, radios, electric light meters, hotels, stores and several other important things about each city.

As in all other phases of business, co-operation is the key-word of successful relationships between business papers and the industries they represent. Most papers are willing to give it. They are giving service and are helping to weld all branches of industry into a unit working for the common good.

Modern Tendencies

The tendency to form groups of papers owned and operated by one institution is growing. Four or five papers operated in combination make a unit that is not too large to be carefully managed and yet produces a revenue sufficient to make substantial publications.

Another modern tendency of industrial papers is to specialize. Where one paper covered the entire field of an industry a few years ago, several papers now do the same job much more thoroughly. It is quite

conceivable that the greatest development of business papers in Canada during the next few years will be this growing specialization of appeal. As Canadian industry expands the industrial press will be able to extend its activities and provide a much greater service to industrial progress than has yet been possible.

CANADIAN COMPANY LEGISLATION[1]

FRED W. MARSDEN

IN order that the investor, who is the supplier of capital funds to corporate enterprises, may be adequately protected from negligence and fraud on the part of those who manage his funds, all states have seen fit to enact company laws. These laws are, unfortunately, not only too often inadequate but also lack a desirable degree of uniformity. In Canada there is a Dominion Companies Act and nine Provincial Acts, no two of which are exactly alike.

Although these acts are frequently amended, there appears to be a lag between the economic development of the corporation and the development of legal regulation which should direct its growth. Greatly improved productive efficiency, wider markets and a higher standard of living have combined to hasten the advent of large-scale business enterprise. The necessary funds for this expansion came from the private savings of individuals by means of the sale of corporate securities. That this flow of private savings into industry may be maintained, large corporations and their financial practices must be kept under control.

Professor Paul M. O'Leary states the problem in this way, "How can the large corporation be subjected to desirable methods of social control, while at the same time its unquestioned efficacy, as a device for organizing industrial activity on the scale required by the conditions of modern life, is preserved?" To throw some light on the problem and to arrive at possibly a few worthwhile suggestions involves an analysis of the Dominion and the various Provincial Companies Acts.

The Dominion Companies Act

After the preliminaries of organization have been attended to, the company must obtain sufficient capital for the carrying out of the enterprise or for its future expansion. In this connection the provisions of the Act have been made more stringent.

Before a company may accept any

1. *This article is an extract from Mr. Marsden's thesis, entitled "Canadian Company Legislation."*

application for publicly-offered securities, it must file a copy of a document known as a prospectus with the Secretary of State and also have a copy in the hands of the prospective investor twenty-four hours before the application is received. Every person who signs his name to a prospectus shall be liable for any misstatements therein to the extent of any loss incurred by anyone who accepts these statements in good faith. All relevant information is contained in the prospectus to enable a reasonably careful investor to judge the worth of the securities he is invited to buy. This information concerns the purpose of the issue, particulars of any stock issued for property and services, as well as any detailed information concerning the operations of the company during the past two years. If the company has been in operation for a year or more prior to the issue of the prospectus a balance sheet dated no earlier than four months before the date of the prospectus must be attached. Other detailed audit information must also be given with statements of opinion regarding profits previously made, appraisals, the sufficiency of reserves for depreciation, *et cetera*. If offering of the stock is not made within thirty days after the prospectus is filed a new one must be prepared and filed. Hence, prospective investors are assured of up-to-date information.

But the provisions regarding the delivery of the prospectus to an investor do not apply where the issue or part of it has been sold to investment dealers for resale. The Act treats the broker in the same light as any other stockholder. Only the Manitoba Act requires an investment dealer to divulge upon request all information contained in the prospectus. In Saskatchewan, however, when the sale is made to the public within six months of the allotment of the shares to the underwriter and when the underwriter does not pay the whole consideration for the shares outright to the company, such a sale comes under the prospectus provisions of the Act. The great bulk of sales made by investment dealers come under this classification. Both provinces make the underwriter jointly liable with directors of the firm for all statements contained in the prospectus.

According to Section 12, (4) and (7), a company may set aside, as distributable surplus, a portion of the proceeds from the sale of no-par stock, the amount designated not to exceed twenty-five percent. of the total proceeds of the issue. This may delude investors into thinking the stock is earning when

payment is made immediately. If apportionment is to be sanctioned at all, the maximum amount to be credited to surplus should be limited as in the British Columbia and Saskatchewan Acts. The amount that may be set aside as distributable surplus must be in the same proportion to the total proceeds as the existing surplus is to the total capital and surplus combined. This makes for a more equitable apportionment to capital and free surplus. It maintains the same ratio of surplus to capital as existed before the new issue.

Another objectionable feature of the Act is that a company, with the consent of two-thirds of the stockholders and provided that the Secretary of State is satisfied with the expediency and "bona fide" character of the move, may transfer from capital to surplus, amounts that have previously been credited to the capital fund. It follows from this that the risk of extending credit to a company with no-par value stock cannot be calculated, for the amount of the capital fund can be reduced by repayment of contributed capital without the consent of creditors and without their foreknowledge.[1]

As a constructive proposal, it is submitted that the safest and simplest way to regulate the capital fund of a company organized with no-par value shares is to require the whole of the proceeds of the issue of such shares to be put into the fund and left there. There are some exceptions. After two years during which the expenses of the incorporation have been shown separately on the balance sheet, a new company should be allowed to write these expenses off against the fund and thus eliminate an expenditure which produced no revenue. Exception should also be made to enable the company which has to reincorporate in order to adjust its capital to changing needs, to retain as surplus any surplus existing at the date of reorganization.[1]

The Dominion Act does not require the directors to offer new shares to the present stockholders first. This "pre-emptive right" of present shareholders to subscribe first of all to new issues should be made a part of the Act, so that if a shareholder's equity in the company is reduced by means of the new stock issue, it will only come about because he failed to exercise his option.

According to Section 65, a company that has redeemed debentures previously issued shall have the power to reissue such debentures,

1. *Financial Manipulation — Professor Smaills — Queen's Quarterly — May, 1933—p. 271.*

1. *Ibid—p. 272.*

unless provision is made to the contrary. Naturally, with redeemed debentures in its treasury, a company has great temptation to reissue these when liquid funds are needed. It is a very easy method of raising capital, and one which entails no redistribution of voting control. The result is that many companies which have once issued debentures, rarely ever become free of funded debt.

The second broad classification used in breaking down the Act, includes all those provisions that concern the management and internal operations of the company, insofar as these are subject to statutory control.

The by-laws of very few companies require that the qualifying shares of the directors be held absolutely and in their own right. This is because most businesses of dubious merit require one or more "dummy directors" whose good names can be bought for the price of admission to the board of directors. The Act should insist that directors hold their qualifications beneficially and that they be fully paid. Otherwise, it is doubtful if any board of directors would be truly representative of the shareholders.

Section 91 of the Dominion Companies Act states that "a director may be indemnified out of the funds of the company from all costs, charges, or expenses which he sustains in connection with any suit brought against him in respect of the duties of his office." Since the shareholders must meet all the expenses out of their own pockets, whether their contentions are sustained or not, this provision may hinder them from bringing a director to court for negligence or fraud. The Quebec Act contains the same provision but makes an exception of the costs, charges, or expenses that are occasioned by the director's own fault. This exception in the clause is certainly just and puts shareholders and creditors on a more even ground with directors in a court action.

The third major classification embraces the sections of the Act which are concerned with the publication of corporate information. The new Act (Section 112) requires a company to present at each annual meeting:—

(1) A balance sheet made up to date not more than four months before such general meeting;

(2) A general statement of income and expenditure for the financial period ending upon the date of the balance sheet;

(3) A statement of surplus showing separate accounts for capital surplus, distributable surplus and earned surplus respectively, the amounts of such ac-

counts at the beginning of the period, adjustments affecting previous financial periods, changes during the period under review, and final balances as at the date of the statement;

(4) The report of the auditors.

The consolidated statement is not made obligatory, but, in respect of any subsidiary whose accounts are not to be consolidated with those of the parent company, a statement is to be appended to the balance sheet of the parent company, explaining how the profits or losses of that subsidiary have been treated in the accounts of the holding company—and the statement is to be signed by the auditors. Unfortunately, only a reference to the auditors' report is necessary on the balance sheet.

Many corporations have prepared for their own use systems of accounts and directions for their consistent application. Good and sufficient reasons for making changes in these systems arise from time to time, and the shareholders should be advised of such changes. The New Dominion Companies Act fails to make this requirement and, hence, leaves the way open for manipulation of accounts through changes in accounting methods.

Professor Smaills of Queen's University, who is perhaps the foremost critic of the 1934 Dominion Companies Act, says, "While the Act has some merits, it fails, in critical respects, to attain its professed object of affording greater security to investors, shareholders, and creditors, and it widens still further the gulf between the prestige and the efficacy of the federal corporation laws." Defenders argue that it is just as stringent as it possibly can be, without driving all companies to incorporate under Provincial charters.

The Provincial Companies Acts

In recent years, a large majority of the new incorporations in Canada have been carried out under the Provincial Acts. The reason advanced for this is simply that the Provincial laws in regard to companies are more lax. This may be true in a general way but certain of the Provincial Acts are, in many respects, much more exacting than the Dominion Act. A brief survey of certain sections of the various Provincial Companies Acts may serve to bring out some points of difference.

The regulations in regard to no-par stock are many and varied throughout the provinces. The provisions of the British Columbia and Saskatchewan Acts in connection with the setting aside of a part of the proceeds from the sale of no-par stock as distributable

surplus, have already been discussed under the Dominion Companies Act. The Ontario and Manitoba Acts permit the transfer to distributable surplus of any portion of the amount paid in for the issue of no-par stock. These last two acts, in failing to set a limit to this amount are more open to criticism than the Dominion Act.

Alberta, Quebec, New Brunswick and Nova Scotia go to the other extreme. There is no provision contained in these Acts for the transfer to surplus of a part of the proceeds from the sale of no-par stock. This is entirely sound and recent proposals for company law reform seem to indicate that other Acts will be changed to eliminate the distribution to surplus that they now permit. Paid in capital should remain as capital and not be available for either dividends, revaluation of assets, or other surplus adjustments.

In Nova Scotia, if shares are issued for property or services performed, the company must first file with the Registrar particulars of the transaction and a copy of the contract. The Quebec Companies Act has a similar provision, which adds that the copy must be filed with the Provincial Secretary "at or before the issue of such shares or within thirty days thereof". These rulings should provide for closer control over the issue of stock for property or services and the valuation of such considerations. Ontario goes still further and rules that a company may not issue shares for property or services unless expressly authorized by a vote of shareholders representing two-thirds in value of the total outstanding shares.

Insofar as the purchase of shares in another company by any corporation is concerned, both the British Columbia and Saskatchewan Acts forbid it expressly in these terms, "Notwithstanding anything contained in its memorandum, no public company shall take or acquire by purchase or otherwise any shares in any other corporation, unless expressly authorized in each such case by an ordinary resolution of the company". This means that, every time a purchase of shares is made, it must be authorized by the shareholders. It is a great improvement over the Dominion Act on this point, as the latter allows the purchase of securities without an expression from the shareholders. This clause should do much towards correcting the tendency of manufacturing and trading corporations to make unwise consolidations resulting in top-heavy holding company structures.

The regulations concerning the

rights, powers, responsibilities, and liabilities of directors vary greatly among the provinces. The British Columbia Companies Act provides for the publication to all shareholders of the total remuneration paid to each director of a company, upon the vote of twenty-five per cent. of the shareholders. The assumption is that if one-quarter of the owners of a company feel strongly enough on the matter to go to the trouble and expense of obtaining the necessary vote, there must be some justification for the disclosure. It is highly improbable that the privilege will be abused, but rather it should be effective as a measure of control upon the activities of unduly autocratic directors. This same provision applies in Alberta.

The provisions of the Saskatchewan Act in connection with loans to shareholders and employees are particularly good. Such loans are prohibited except in those cases where they are made to enable employees either to purchase shares in a company to hold beneficially, or to purchase dwelling houses. Most of the Companies Acts neglect to state that shares so purchased by employees must be held beneficially, hence companies have been using this means of buying up their own stock. In addition, directors are liable only for the amount of the loan made in contravention of this section.

By Section 88 of the Ontario Act, the directors cannot declare a stock dividend unless it is authorized by a vote of the shareholders representing two-thirds in value of the total outstanding shares. Section 96 requires this same ratification before a company can purchase shares of another corporation. In both cases the idea of referring the proposed action to shareholders for sanction before taking action is very commendable. These types of transactions, in themselves, are not actually harmful, but if their performance is left entirely in the hands of the directors, they may easily become definitely opposed to the interests of the shareholders. If the plan of shareholders' approval is to work successfully, however, shareholders will have to take a live interest in these transactions and know exactly for what they are voting.

The Saskatchewan Act requires that a company present a balance sheet and a profit and loss statement annually. The prescribed form of the balance sheet is set out in much detail and should be a model for the other provinces. A copy of the auditors' report must also be attached to every balance sheet. Enough of this Act has been discussed to indicate clearly that it is probably the most advanced of all

our Canadian Acts of Incorporation, including the Dominion Act.

The Ontario Companies Act requires a company to submit to its shareholders, seven days before each annual meeting, an audited balance sheet and statement of income and expenditure. The by-laws, however, may provide that these statements need not be sent out, but merely read at the annual meeting. The assets on the balance sheet must be segregated into certain items and groups, but the segregation is not carried as far as it should be. Neither is there any provision for the valuation of fixed assets and intangible items, such as exists in the Dominion Act. Nevertheless the Ontario Act is superior to most of the provincial Acts in this regard.

The Ontario Companies Information Act of 1930, regulates the publication by corporations of prospectuses and other statements offering shares to the public. An annual return, setting forth complete details of the capital structure of the company, must be filed with the Provincial Secretary. Similar statements may be required by the Provincial Secretary at any time and must be submitted to him at once. Progressive penalties are provided for each succeeding day a company fails to comply with the regulations.

Conclusion

It is generally felt that the matter of jurisdiction is the most serious problem in the way of Canadian company law reform. The Dominion can control companies incorporated under Dominion laws, but each of the nine provinces has also the right to make its own laws for incorporation and regulation of companies. It has been suggested that an amendment to the constitution be sought, so that the Dominion would be given exclusive jurisdiction over companies. But this would mean that the Provinces would have to surrender their jurisdiction over property and civil rights. So far, none of the provinces has shown much inclination to surrender one iota of its authority.

The main obstacle to company law reform is not, however, competitive bidding by rival jurisdictions, but failure of the general public, because of apathy and lack of organization, to secure adequate representation when reform is under discussion. Corporation law is a technical subject requiring special study, and for this reason the fate of amending legislation is settled in committee rather than in the house. In committee, the interests of the promoters and security-houses are, as a rule, the only ones

effectively represented, with the result that the tendency already mentioned is becoming pronounced. It is not clear how this difficulty can be overcome, unless it be by the appointment of an impartial commission, representative of all interests, and enjoying the public confidence to such an extent that its proposals for reform could not be ignored. There is no immediate prospect of such a solution being adopted, and a determined effort must therefore be made to develop an articulate public opinion which cannot be safely ignored by any elective body.[1]

National control of corporations is not necessary; it would probably result in very little more than an unhealthy concentration of power. What is necessary is a better understanding by the various governments of the changing concepts and relations between corporate security holders and the corporation itself, between shareholders and management and between one class of security holders and another. Not much additional legislation is required, but rather "teeth" must be put into many existing statutes.

To insure adherence to the new standards and acceptance of further revisions, a conference should be held every two or three years by the Dominion and various Provincial Governments at which the Companies Acts and the Sales of Shares Acts should be amended in the light of changed conditions. In a broad sense, the attempt should be made to keep the law moving as closely as possible upon the heels of economic development.

Those few reforms which are most pressing concern:

(1) The publication of statements—more frequent and detailed statements with explanations as to the method of arriving at the figures shown.

(2) Directors' responsibility—there should be a general recognition that the directors are in a real sense trustees of the enterprise, managing it for the best corporate interests. Because of the wide separation between the stockholders and the management, directors should be liable under all the laws of fiduciary capacity.

(3) The "pre-emptive right" of existing shareholders to participate first in new issues of stock should become a point of law.

(4) There should be allowed only one class of common stock and one class of preferred stock. Complicated capital set-ups make for undesirable concentration of control.

(5) All of the proceeds from

1. *Ibid—May*, 1933.

the sale of no-par stock should be credited to the capital account. The broad discretion often permitted directors as to what portion of the sale price of no-par shares should go to distributable surplus has made a farce out of the theory that the capital stock account represented the margin of minimum creditor protection provided by the stockholders.

(6) As previously suggested, there should be a more frequent revision of the Companies Acts. The Prince Edward Island and New Brunswick Acts of 1913 have few amendments. The Nova Scotia Act of 1923 has not been substantially amended in any respect.

(7) A corporation shall, in its books and in its published reports, indicate clearly the division of the surplus accounts between surplus arising from earnings and surplus arising from other sources. A better definition of surplus, as to what is earned or what capital surplus, should be obtained by the process of elimination in order to avoid the pitfalls of a direct definition.

(8) The various Provincial Sales of Shares Acts, which are in general quite adequate, should be more strictly enforced.

(9) In general, more power should be given to shareholders. Many acts of the directors could be made subject to approval by shareholders. A gradual extension of this increased responsibility placed upon the shoulders of stockholders should enable them to become more intelligently and vitally interested in the affairs of their company.

It is true that much recent Candian company legislation has been retrograde. Yet, since 1930, such changes have taken place in the financial world that even progressive legislation has soon become obsolete. If business men and governments have profited through the experience of these years, it is altogether likely that the immediate future will bring a more balanced and permanent relationship between private business and public control. And governments will encourage rather than fetter sound economic growth.

Editor's Note

The Dominion Companies Act Amendment, which was passed by the House of Commons on June 24, 1935, included two changes similar to Mr. Marsden's recommendations.

Changes were made in the requirements for the balance sheet. The amendment rules that every balance sheet shall show clearly and distinguish between the follow-

ing classes of assets and liabilities, namely:

(a) cash.

(b) debts owing to the company from its directors, officers, or shareholders.

(c) other debts owing to the company, including accounts and bills receivable in such form as to distinguish between current and non-current accounts.

(d) inventory, if any, stating the basis of valuation.

(e) investments and securities, stating their nature and market value, if readily ascertainable.

(f) any expenditure made on account of future business.

(g) land, buildings and plant, stating the basis of valuation, whether cost or otherwise.

(h) if known or ascertainable, the amount of goodwill, patents, contracts, leases, etc.

Concerning the use of proceeds from the sale of no-par stock, the amendment states that no part of the consideration received by a company from the issue of no-par value shares may be set aside as distributable surplus, unless it is provided in the original contract for subscription of the shares, that a part of it not exceeding twenty-five per cent. may be set aside as distributable surplus.